

## 37 Am. Jur. 2d Fraud and Deceit § 78

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### Fraud and Deceit

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#### IV. False Representations

##### B. Necessity that Representation Be of Fact; Opinions

##### 3. Qualifications of, and Exceptions to, Rule Holding Opinions Nonactionable

##### b. Where Relation of Trust and Confidence Exists

## § 78. Scope of relationship necessary to give rise to liability—Opinion of professional advisor

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Fraud](#)  11

### Forms

[Am. Jur. Pleading and Practice Forms, Fraud and Deceit § 222](#) (Instruction to jury—Expressions of opinion or affirmations of fact—Statements by one having expert knowledge)

Under certain circumstances, expressions of professional opinion are treated as representations of fact; when a statement, although in the form of an opinion, is not a casual expression of belief but a deliberate affirmation of the matters stated, it may be regarded as a positive assertion of fact.<sup>1</sup>

In the case of a professional advisor, liability for fraud may be imposed if the advisor expresses to another who depends upon the advisor an opinion within the scope of his or her professional capacity which the advisor knows not to be true.<sup>2</sup> Thus, liability in tort for fraud is imposed upon one who is employed to advise upon matters within the scope of his or her professional capacity and who expresses an opinion known not to be true.<sup>3</sup> When a professional has a specific awareness that a third party will rely on his or her advice or opinion, the furnishing of which is for that very purpose, and there is reliance thereon, tort liability will ensue if the professional report or opinion is fraudulently prepared.<sup>4</sup>

Knowledge of the falsity of his or her opinion is not requisite, however, in order to impose liability in damages, for where the advisor's duty is to present correct statements and give sound advice, it is futile to say that there is no liability because the matter of advice would, except for the professional employment, be regarded as mere opinion.<sup>5</sup> Thus, an advisor is liable where the opinion is made under such circumstances that the law must necessarily impute knowledge of its falsity to him or

her.<sup>6</sup>

**Observation:**

A representation of law is an opinion and generally cannot form the basis of an action for fraud in the absence of a fiduciary relationship.<sup>7</sup>

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Footnotes

- <sup>1</sup> B.L.M. v. Sabo & Deitsch, 55 Cal. App. 4th 823, 64 Cal. Rptr. 2d 335 (4th Dist. 1997).
- <sup>2</sup> Vokes v. Arthur Murray, Inc., 212 So. 2d 906, 28 A.L.R.3d 1405 (Fla. 2d DCA 1968); Squyres v. Christian, 242 S.W.2d 786 (Tex. Civ. App. Texarkana 1951), dismissed.
- <sup>3</sup> Lietz v. Primock, 84 Ariz. 273, 327 P.2d 288, 67 A.L.R.2d 1262 (1958) (attorney); Lane v. Inhabitants of Town of Harmony, 112 Me. 25, 90 A. 546 (1914) (architect); Tvedt v. Haugen, 70 N.D. 338, 294 N.W. 183, 132 A.L.R. 379 (1940) (physician).
- <sup>4</sup> Rodin Properties-Shore Mall, N.V. v. Ullman, 264 A.D.2d 367, 694 N.Y.S.2d 374 (1st Dep't 1999).
- <sup>5</sup> Tvedt v. Haugen, 70 N.D. 338, 294 N.W. 183, 132 A.L.R. 379 (1940) (physician).
- <sup>6</sup> Collins v. Chipman, 41 Tex. Civ. App. 563, 95 S.W. 666 (1906), writ refused; Squyres v. Christian, 242 S.W.2d 786 (Tex. Civ. App. Texarkana 1951), dismissed.
- <sup>7</sup> § 101.

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